and it placed the matter on its agenda for September 19, 2002.[6] On that date, the CPUC generally affirmed the July 23 Proposed Decision with certain modifications, and granted Pacific's motion for an order declaring that it had substantially complied with the section 271 competitive checklist.[7]

* * * *

This Application confirms that SBC has satisfied all prerequisites for interLATA relief. Part I of this Brief details CLECs' provision of local services in California, and explains that, as a result, Pacific is entitled to a "strong presumption" that it complies with the competitive checklist. Part I also details Pacific's satisfaction of the first statutory requirement for section 271 relief under Track A – the presence of predominantly facilities-based competitors in the local business and residential markets. See 47 U.S.C. § 271(c)(1)(A), (d)(3)(A).

After this empirical proof that local markets are open, Part II offers qualitative proof, by demonstrating in detail Pacific's compliance with the specific requirements of the competitive checklist, as established by the 1996 Act and amplified by the FCC's implementing decisions. Part II describes the specific terms and conditions of Pacific's contracts with its CLEC

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[6] On September 4, 2002, CPUC Commissioner Brown released an alternate draft that recommended certain modifications to the July 23 Proposed Decision. See Alternate Draft (Sept. 4, 2002) (App. K, Tab 76) ("September 4 Alternate Draft"). In addition, just prior to its September 19 meeting, the CPUC made publicly available a revised proposed decision incorporating other changes to the July 23 Proposed Decision. That subsequently released version is referred to herein as the "September 19 Proposed Decision" and is included in Appendix K, Tab 81 of this Application. References herein to the July 23 Proposed Decision are to the draft as released on July 23, 2002. As noted in the text, that draft is included in Appendix D, Tab 258 of this Application.

[7] The CPUC's final order is not yet publicly available. Pacific will file that order promptly upon its release.

customers, as well as technical features of Pacific's network, and it demonstrates that Pacific's performance in serving CLECs is nondiscriminatory and easily sufficient to provide them with a meaningful opportunity to compete in the local market.[8] This discussion and the affidavits supporting this Application confirm that California CLECs have access to everything they reasonably might need to compete in California.

Part III of this Brief demonstrates that approving SBC's Application would serve the public interest, convenience, and necessity, in satisfaction of 47 U.S.C. § 271(d)(3)(C). Indeed, approval of this Application is not merely consistent with the public interest; freeing SBC from statutory entry barriers is necessary to spark local entry and bring California consumers the same benefits of both local and long-distance competition that consumers are now experiencing in other states with section 271 relief.

Part IV confirms that SBC will abide by the structural and non-structural safeguards of section 272, as well as the FCC's implementing regulations, when it provides interLATA services in California. See id. § 271(d)(3)(B).[9]

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[8] The performance data presented in this brief and the accompanying affidavits are current through July 2002. SBC will provide data for August 2002, which were not available at the time SBC prepared this Application, by September 27, 2002.

[9] The Anti-Drug Abuse Act certifications required under 47 C.F.R. § 1.2002 are provided in Attachment 2 to this Brief. SBC has, in addition, complied with the FCC's pre-filing consultation requirements through the California PUC's pre-filing proceedings, as described above. SBC has consistently attempted in those proceedings, in its interconnection negotiations, and elsewhere to resolve disputed issues pertaining to the competitive checklist and other relevant matters. This Brief and its supporting affidavits are available in electronic form at http://www.sbc.com/public_affairs/long_distance_news/california/0,5931,54,0.htm.

DISCUSSION

I. SBC IS ELIGIBLE TO SEEK INTERLATA RELIEF UNDER SECTION 271(c)(1)(A)

There can be no serious dispute that Pacific satisfies Track A of the 1996 Act, see 47 U.S.C. § 271(c)(1)(A). As the affidavit of J. Gary Smith notes, the California PUC staff reached that conclusion as early as 1998, and, since that date, the presence of facilities-based CLECs in both the business and residential segments of the local market in California has increased substantially. See J.G. Smith Aff. ¶¶ 4-5 (App. A, Tab 22); see also id. Attach. E.[10]

Indeed, far more than merely establishing compliance with Track A, the evidence of local competition in California entitles Pacific to a "strong presumption" that the local market in California is open and that Pacific is entitled to section 271 relief.[11] CLECs already serve at least 2.6 million, and probably closer to 3.9 million, access lines in Pacific's service area, which translates to an approximate market share of between 13 and 18 percent. See J.G. Smith Aff. ¶ 8 & Table 1.[12] CLECs are serving these lines, moreover, using all three entry vehicles

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[10] A list of CPUC-approved interconnection agreements is provided as Attachment A to the affidavit of Enrico Batongbacal. A selection of the most significant agreements is reproduced in Appendix B of this Application. The status of federal court challenges to Pacific's agreements in California is provided in Attachment 3 to this Brief.

[11] Evaluation of the United States Department of Justice at 43, CC Docket No. 97-121 (FCC filed May 16, 1997) ("DOJ Oklahoma I Eval.").

[12] The lower estimate is derived from Pacific's E911 database, and therefore reflects only lines from which outbound calls can be made. Because this methodology does not count lines set up only to receive calls, it likely understates the extent of facilities-based competition in California. See J.G. Smith Aff. ¶ 8 n.6. The higher estimate is derived by multiplying the total number of interconnection trunks provided by Pacific in California by a factor of 2.75 – a conservative estimate of the average number of lines served by each interconnection trunk. See id. ¶ 8 n.5.

contemplated by the Act. CLECs serve between approximately 2.2 and 3.5 million access lines over their own facilities, either exclusively or in combination with the hundreds of thousands of UNEs they have leased from Pacific. See id. Table 1 & Attach. A. They serve an additional 222,000 or so access lines using UNE-P, and another approximately 151,000 using resale. Plainly, consumers in California are witnessing "actual, broad-based entry through each of the entry paths contemplated by Congress."[13]

While all measures of competition show rapidly increasing CLEC penetration of the local market in California, competition in the residential market is particularly robust. CLECs already serve more than three-quarters of a million residential access lines, the vast bulk of which are provided over CLECs' own facilities. See id. ¶¶ 10-12 & Table 2. Measured in percentage terms, this extensive facilities-based penetration in the residential market dwarfs the levels in, for example, Texas and New York when the FCC reviewed section 271 applications for those states. See id. ¶ 12; see also id. Attach. D (comparing various indicators of local competition in California with those in other states with section 271 relief).

To hear AT&T and WorldCom tell it, moreover, these impressive levels of competition can only be expected to increase. A little over a year ago, AT&T described its cable telephony operation in California as not only "'racking up customers and providing hefty local competition for Pac Bell,'" but also "'positioned to realize significant financial returns.'" Id. ¶ 15 (quoting AT&T Broadband's Vice President of Communications and its Broadband Investor Presentation). A few months later, in January of this year, AT&T expressed an equally bullish

[13] DOJ Oklahoma I Eval. at 43.

view on the prospects for UNE-based competition, describing San Diego and Los Angeles as among the nation's "'most profitable locations'" for a UNE-based local entry strategy. Id. ¶ 16 (quoting AT&T Consumer's President and CEO). And in May of this year, AT&T described the the California PUC's decision reducing Pacific's UNE rates on an interim basis as "'set[ting] the stage for real competition'" and "'ensur[ing] more jobs and investment in the state as companies compete for local phone customers.'" Id. ¶ 18 & Attach. L (quoting AT&T press release). Indeed, according to an independent analysis released just this week, AT&T's own data "shows that the company achieved its highest first month [UNE-P] penetration in California and New Jersey, its two most recent states."[14]

WorldCom has told a similar tale. It has rolled out "The Neighborhood" in California – an action that, by its own admission, it takes only where the local phone company has "opened [the] market[] to competition"[15] – and it has publicly proclaimed that the UNE rates now in effect in California will permit it to expand the availability of that offering. See id. ¶ 18. Indeed, WorldCom has stated that, if Pacific "'commits to these approved rates and other market-opening requirements, [WorldCom] will have no reason to oppose'" Pacific's bid for long-distance relief. Id. & Attach. M (quoting WorldCom press release).

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[14] UBS Warburg: Global Equity Research, AT&T Says UNE-P Is Here to Stay, at 2 (Sept. 18, 2002).

[15] See MCI, The Neighborhood, Help – Questions About Service, at www.theneighborhood.com/res_local_service/jsps/help.jsp?subpartner=FREEMONTH#q12.

AT&T has reportedly made a similar commitment not to oppose Pacific's application in light of the California PUC's decision to reduce rates.[16] Of course, as they did before the CPUC, AT&T and WorldCom will undoubtedly disregard that commitment and argue here that the local market in California is not open to competition. It is clear, however, what is driving these reversals. AT&T and WorldCom do not seriously believe that the local market is closed – their own actions and words belie any serious contention to that effect. Rather, they wish to stave off the onset of real long-distance competition in California and reap for themselves the opportunity to market bundled local and long-distance service. As Chairman Powell has explained: no matter what the evidence shows, "[t]here will never be a 271 . . . to which there will not be a community of competitive entrants . . . like AT&T who will not scream that it was premature. Why? Because as far as they're concerned entry will never be right."[17]

We address immediately below the myriad details of Pacific's compliance with the requirements of section 271. In view of that comprehensive showing and the actual successes of Pacific's competitors in the local market in California, the time is plainly "right" to bring consumers in California the benefits of competitive entry in long distance.

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[16] See, e.g., Glenn Bischoff, SBC: CLECs Reneged on Commitment to Drop Opposition to Pac Bell 271 Application, TelephonyOnline.com (Aug. 21, 2002) ("'I was given an assurance by the CEO of AT&T, the CEO of WorldCom and an executive at Z-Tel to the effect that they would drop their opposition to 271 if'" the CPUC were to reduce rates as it ultimately did.) (quoting CPUC Commissioner Geoffrey Brown), at http://currentissue.telephonyonline.com/ar/telecom_sbc_clecs_reneged/index.htm.

[17] Powell Defends Stance on Telecom Competition, Communications Daily, May 22, 2001.

II. PACIFIC'S CALIFORNIA PUC-APPROVED AGREEMENTS SATISFY ALL REQUIREMENTS OF THE COMPETITIVE CHECKLIST

The following sections (and the affidavits and other materials supporting them) discuss Pacific's contractual offerings, associated network arrangements, performance data, and other evidence that establish that Pacific satisfies the requirements of the section 271 "competitive checklist." See 47 U.S.C. § 271(c)(2)(B).

A. Checklist Item 1: Interconnection

In satisfaction of Checklist Item 1, Pacific provides interconnection "at any technically feasible point" within its network that is "at least equal in quality" to the interconnection Pacific provides itself, on rates, terms, and conditions that are "just, reasonable, and nondiscriminatory." 47 U.S.C. § 251(c)(2); see Texas Order ¶ 61. CLECs in California thus have access to a basic prerequisite of local exchange competition – the ability to send their customers' calls to, and receive calls from, customers of the incumbent carrier. CLECs are able to connect their networks to Pacific's by the most efficient means possible, including placement of the CLEC's own equipment in Pacific buildings.

To carry traffic between Pacific and CLEC locations, Pacific has provisioned approximately 1.29 million interconnection trunks in California. See J.G. Smith Aff. Attach. A. To ensure nondiscrimination, Pacific provisions these trunks using the same equipment, processes, technical criteria, and service standards that are used for Pacific's own retail trunks. See Deere Aff. ¶ 31 (App. A, Tab 6). As further discussed below, these and other steps to facilitate interconnection between Pacific and CLECs fully satisfy the requirements of Checklist Item 1. See Texas Order ¶ 65; Kansas/Oklahoma Order ¶ 223.

Pacific's interconnection agreements with other carriers establish three standard methods by which CLECs may connect their networks to Pacific's: mid-span fiber interconnection, collocation, and leasing of Pacific's facilities. See Deere Aff. ¶ 14. Each of these interconnection arrangements is available at the trunk side or line side of the local switch, the trunk connection points of a tandem switch, central office cross-connect points, out-of-band signaling transfer points, and points of access to UNEs. Id. ¶¶ 18-19. For the purposes of interconnection to exchange local traffic, a CLEC may choose a single, technically feasible point of interconnection within a LATA. See id. ¶ 28; Texas Order ¶ 78; Kansas/Oklahoma Order ¶ 232. Pacific will provide other technically feasible alternatives through a Special Request Process. See Deere Aff. ¶ 14.

1. Interconnection Trunking

Mid-span fiber interconnection ("MSFI") is available at any mutually agreeable, economically, and technically feasible point between a CLEC's premises and a Pacific eligible structure – including without limitation a tandem or end office. Id. ¶ 15. The MSFI arrangement may be used to provide interoffice trunking for originating and terminating calls between the two networks or for transit of calls to or from a third party via Pacific's tandem switch. Id. ¶ 16. The Affidavit of William C. Deere discusses interconnection interoffice trunking arrangements from a CLEC to Pacific (for traffic originated by the CLEC), and from Pacific to a CLEC (for traffic terminated over the CLEC's network). Id. ¶¶ 24-36.

Pacific has implemented, as part of its performance measurement plan, multiple separate measures relating to interconnection trunking. Relevant measures track trunk blockage, the percentage of missed due dates, average completed interval, and timeliness of customer trouble

report resolution. See Johnson Aff. ¶¶ 25-26, 30-31, 33. From May through July 2002, trunk blockage was well below the standard of no more than two percent of trunk groups with blocking levels of two percent or higher, and Pacific met (or surpassed) more than 97 percent of the relevant provisioning standards. See id. ¶¶ 48, 54-55 & Attach. B; see also Texas Order ¶¶ 67-70 (relying primarily on trunk blockage and missed due-date performance); Kansas/Oklahoma Order ¶¶ 225-227 (same).

2. Collocation

CLECs in California may collocate on Pacific's premises equipment necessary to interconnect with Pacific's network or to access Pacific's unbundled network elements, in order to provide telephone exchange service and exchange access. See Shannon Aff. ¶¶ 27-79 (App. A, Tab 20). CLECs are taking advantage of these opportunities: Approximately 40 CLECs are taking advantage of approximately 1,900 collocation spaces in Pacific's central offices. See J.G. Smith Aff. Attach. A.

Pacific provides both physical and virtual collocation pursuant to its FCC-approved interstate tariff, FCC No. 1. See Shannon Aff. ¶ 27. A CLEC may also opt into the terms and conditions of an interconnection agreement between Pacific and another competing carrier (known as the most-favored nation ("MFN") option), or the CLEC may negotiate different terms and conditions. Id. Pacific's terms and conditions for collocation are thus legally binding and cannot be changed without review by the California PUC or by the FCC. And Pacific's collocation offerings comply with the requirements of the Collocation & Advanced Services Reconsideration Order. See id. ¶¶ 74-78.

Physical collocation of CLEC equipment is available in Pacific's premises wherever technically feasible and space permits. See Deere Aff. ¶ 21. Pacific makes available caged, shared cage, and cageless physical collocation arrangements, all at the option of the CLEC. See Shannon Aff. ¶¶ 42, 46-51. Adjacent space collocation is available when all space for physical collocation is legitimately exhausted. Id. ¶ 52. If space in an Eligible Structure subsequently becomes available, the CLEC may, at its option, relocate its equipment into that interior space. Id. ¶ 78; see 47 C.F.R. § 51.323(k)(3). Pacific also will make available other technically feasible collocation arrangements. See Shannon Aff. ¶ 56.

Detailed terms for collocation are provided in Technical Publication TP 76300MP, Installation Requirements, which have been incorporated by reference in several interconnection agreements. Id. ¶ 44. A CLEC obtaining physical collocation also receives access to Pacific's Interconnector's Collocation Services Handbook for Physical Collocation. Id.

If Pacific must deny a CLEC's request for physical collocation because space is not available, Pacific attempts to notify the CLEC by letter within ten days. Id. ¶ 61. The CLEC may tour the structure and, if necessary, seek review of the denial by the California PUC. Id. ¶ 62. Pacific maintains a publicly available document on the Internet indicating when physical collocation space is no longer available in its central offices, pursuant to 47 C.F.R. § 51.321(h). See id. ¶¶ 54-55.

The standards Pacific applies for space reservation are nondiscriminatory and apply equally to affiliates of Pacific. See id. ¶¶ 64, 77. Pacific has adopted a number of policies that conserve collocation space and maximize opportunities for carriers to enter or to expand their presence in the local market, including removal of obsolete, unused equipment upon reasonable

request by a collocator or upon order of the state commission. Id. ¶ 65. Pacific also conserves caged collocation space by allowing CLECs to purchase space in increments as small as the amount of space needed to house and maintain one rack or bay of equipment, or even smaller. Id. ¶ 46.

Security measures for collocators in Pacific's central offices reasonably protect Pacific's network and equipment from harm. Many of these security measures are specifically permitted by the FCC, and any additional measures are no more stringent than those followed by Pacific's own personnel or contractors. Id. ¶ 66. CLEC personnel need not undergo any security training more stringent or intensive than the training undergone by Pacific personnel, nor are they required to obtain training from Pacific. Id. ¶ 67. Consistent with the Collocation & Advanced Services Order,[18] any security partitions Pacific deploys will not interfere with a CLEC's access to its own equipment, and will not be the basis for a claim that collocation space is exhausted. Shannon Aff. ¶ 68. CLECs have access to their physically collocated equipment 24 hours a day, seven days a week, without a security escort, as well as access to restrooms and parking. Id. ¶ 69.

CLECs also have reasonable access to their chosen collocation space during construction. Id. 70. Pacific does not use information obtained from CLECs in the course of implementing security arrangements for marketing or other competitive purposes. See id. ¶ 66. Pacific requires CLEC equipment to meet Level 1 safety standards (which is similar to the generic

[18] First Report and Order and Further Notice of Proposed Rulemaking, Deployment of Wireline Services Offering Advanced Telecommunications Capability, 14 FCC Rcd 4761, ¶¶ 42, 48 (1999), vacated in part, GTE Serv. Corp. v. FCC, 205 F.3d 416 (D.C. Cir. 2000).

Telcordia Network Equipment and Building Specifications ("NEBS") Level 1 safety standards) as set forth in Pacific's Technical Publication 76200, unless it is established in writing that the equipment has been in any incumbent LEC's premises without any known or documented safety problems since before January 1, 1998. Id. ¶ 70. Pacific does not refuse collocation of equipment that fails to meet NEBS or other reliability standards. Id. Pacific also has modified its internal procedures to ensure that, if it denies collocation on the ground that a CLEC's equipment fails to meet applicable safety standards, the FCC-required affidavit contains all information required by the Collocation & Advanced Services Reconsideration Order. See id. ¶ 76.

Pacific provisions collocation space in conformance with FCC requirements. Although the Commission has established default national intervals for physical collocation, those intervals apply only "in the absence of state standards." Collocation & Advanced Services Reconsideration Order ¶ 21; see 47 C.F.R. § 51.323(l). Because the California PUC has established its own collocation application and provisioning intervals, Pacific is currently in compliance with the new regulation. See Shannon Aff. ¶¶ 36-39. Pacific responds to each collocation application within 10 days with a notification of whether space is available, except where a CLEC places a large number of collocation orders in the same five-business-day period. See id. ¶¶ 31-33.

Construction intervals likewise are short. In central office space with existing collocation infrastructure, for example, Pacific has methods and procedures in place to complete construction of caged physical collocation space within 120 days from the completion of the application process. Id. ¶ 34. For inactive space, the interval is 150 days, which reflects the

reasonable engineering time necessary for conversion to an active collocation space. Id. Pacific completes cageless collocation in active space within 110 days from completion of the application process, and within 140 days in inactive space. Id. ¶ 35. Pacific's application and provisioning intervals thus allow California CLECs to obtain collocation in a timely manner.

Performance data from May through July 2002 show that Pacific processed and delivered price quotes on time for every CLEC request. Johnson Aff. ¶ 56. Similarly, within this three-month period, Pacific timely installed 100 percent of CLECs' collocation arrangements. Id. ¶ 57.

Virtual collocation is available to CLECs regardless of the availability of physical collocation. See Shannon Aff. ¶ 71. Pacific uses the same engineering practices for virtually collocated equipment as it does for its own similar equipment, in determining equipment placement and engineering routes for all connecting cabling. See id. ¶ 72. Pacific will also maintain and repair virtually collocated equipment, using the same standards that Pacific uses for maintaining and repairing its own equipment. Id. ¶ 73.

Special Request Process. In addition to these standard offerings, CLECs may request technically feasible, custom-tailored interconnection arrangements through a Special Request process. Deere Aff. ¶¶ 69-73. This process, which is also known as the Bona Fide Request ("BFR") process, allows CLECs to request modifications to existing interconnection arrangements as well as additional arrangements. Pacific will analyze the technical feasibility of the request and prepare a preliminary report for the requesting carrier within 30 days, except under extraordinary circumstances. Id. ¶ 71. If the request is technically feasible and the CLEC authorizes further development, Pacific will negotiate a schedule for arriving at price and

implementation terms (which generally will not extend beyond 90 days from Pacific's receipt of the request). Id. ¶ 73.

Pricing for Interconnection. Pacific provides interconnection at rates set by the California PUC in accordance with sections 251(c)(2) and 252(d)(1). Vandeloop Aff. ¶¶ 8-10, 15-16 (App. A, Tab 23). Collocation prices are interim and subject to true-up pending the California PUC's final determination on permanent rates in the separate OANAD proceeding. Id. ¶ 41. Collocation site preparation charges are pro-rated and allocated based on the percentage of the total space used by each CLEC, so that the first CLEC in a premises is not responsible for the entire cost of site preparation. Shannon Aff. ¶¶ 47, 51.[19]

B. Checklist Item 2: Access to UNEs

Pacific satisfies Checklist Item 2 by providing "nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory." 47 U.S.C. § 251(c)(3); see id. §§ 271(c)(2)(B)(ii), 252(d)(1). This offer of leased access to individual components of Pacific's local exchange network enables CLECs to serve their local customers without duplicating Pacific's multi-billion dollar investment in local network infrastructure.

[19] The California PUC initiated an investigation into the deaveraging of rates in March 2000. See Batongbacal Aff. ¶ 34; Vandeloop Aff. ¶ 22. A CPUC-approved settlement of this investigation calls for the deaveraging of loop rates into three geographic zones. Vandeloop Aff. ¶ 22. Pacific's investigation in that proceeding revealed no meaningful geographic price differences for the network elements (switching and transport) relevant to interconnection, and no party to the California PUC's deaveraging proceeding requested deaveraged interconnection rates. See Scholl Aff. ¶¶ 109-110 (App. A, Tab 19); infra Part II.B.5.

1. Access to UNEs Generally

Pacific has entered into numerous interconnection agreements with CLECs that require Pacific to provide access to network elements on an unbundled basis and that provide access to a comprehensive set of unbundled network elements at rates, terms, and conditions that comply with sections 251 and 252 of the Act and the terms of the UNE Remand Order. Shannon Aff. ¶¶ 80-81; see, e.g., AT&T Agreement Attach. 6 – UNE, §§ 3.0-9.0 & Attach. 7 – OS/DA (App. B, Tab 3); Level 3 Agreement App. – UNE (App. B, Tab 5).

2. UNE Combinations

Pacific is in full compliance with the FCC's combinations rules, 47 C.F.R. § 51.315(c)-(f), as recently upheld by the Supreme Court in Verizon Communications Inc. v. FCC, 122 S. Ct. 1646 (2002). When requested to do so, Pacific will combine particular network elements that are not already combined, including new loop to switch port combinations (the "UNE Platform" or "UNE-P") and, under appropriate circumstances, loop to interoffice transport combinations (the "Enhanced Extended Loop" or "EEL"). See Shannon Aff. ¶ 85; AT&T Agreement Attach. 6 – UNE, § 3.1; see also SBC/Ameritech Merger Order[20] ¶ 393 (provision of UNE Platform for service to residential customers). Where a telecommunications carrier purchases separate UNEs and requests that Pacific combine them, Pacific charges only the sum of the stand-alone nonrecurring charges for each of the UNEs being combined; in other words, Pacific imposes no

[20] Memorandum Opinion and Order, Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, For Consent to Transfer Control, 14 FCC Rcd 14712 (1999), vacated in part, Association of Communications Enters. v. FCC, 235 F.3d 662 (D.C. Cir. 2001).

glue charge. See Vandeloop Aff. ¶ 41; OANAD Pricing Decision at 262 (Conclusions of Law ¶¶ 54-56).

Pacific does not separate UNEs that it currently combines in its network unless a CLEC requests that it do so. See Shannon Aff. ¶ 84. Moreover, the combinations offered in the AT&T Agreement – including new UNE combinations – are available to all CLECs in California through section 252(i). Id. ¶ 23.

To allow CLECs to combine elements themselves, Pacific makes available collocation arrangements, including caged, shared-caged, cageless, and virtual collocation. See id. ¶¶ 42-51, 71-73. Pacific also permits CLECs to collocate their equipment in adjacent controlled environmental vaults or similar structures where space for physical collocation is not available, and Pacific does so under the same nondiscriminatory terms as traditional physical collocation. See id. ¶ 52. In addition, Pacific will extend UNEs that a CLEC intends to combine to a shared UNE frame located in a mechanically secured common space within the Pacific central office or outside plant cabinet. See Level 3 Agreement App. – UNE, §§ 3.1.1.2 & 3.1.1.3; Deere Aff. ¶¶ 59-60; Shannon Aff. ¶ 88.

CLECs are not required to own or operate any equipment of their own to combine Pacific's UNEs. See Shannon Aff. ¶ 89. The various collocation options and other methods of access to unbundled network elements, as well as Pacific's offer to combine certain UNEs for CLECs together provide multiple methods for CLECs to obtain UNEs without owning or controlling any other local exchange facilities. Facilities-based CLECs can use these same methods to combine Pacific's network elements with their own facilities. In addition, CLECs are not restricted to these methods of combining UNEs, but may request other technically feasible

methods of access that are consistent with the provisions of the 1996 Act and other governing statutes and decisions. See Deere Aff. ¶¶ 5, 69-73; Level 3 Agreement App. – UNE, § 5.4; AT&T Agreement at 25-26 (General Terms and Conditions § 22).

3. Line Sharing

Pacific is also in compliance with this Commission's Line Sharing Order. See Chapman Aff. ¶ 71 (App. A, Tab 3); see also infra Part II.D.1.b. CLECs may obtain the terms and conditions for DSL-capable loops, including terms for line sharing, from either the Ernest or Navigator Agreements or through the multi-state generic interconnection/resale agreement. See Chapman Aff. ¶ 3 n.1. Moreover, Pacific currently exceeds the Commission's requirements by voluntarily providing the splitter for a CLEC in conjunction with line sharing at the CLEC's request. See id. ¶ 70 (describing Pacific's line-splitting offer).

4. Intellectual Property

Pacific will make its best efforts to obtain any associated intellectual property rights that are necessary for the requesting carrier to use unbundled network elements or ensure that none are required in compliance with the FCC's Intellectual Property Order.[21] See AT&T Agreement at 12-13 (General Terms and Conditions § 12). Pacific is not aware of any action in which a third party intellectual property owner has asserted a claim or a request for payment for a CLEC's use of Pacific's UNEs. See Shannon Aff. ¶ 90.

[21] Memorandum Opinion and Order, Petition of MCI for Declaratory Ruling that New Entrants Need Not Obtain Separate License or Right-to-Use Agreements Before Purchasing Unbundled Elements, 15 FCC Rcd 13896 (2000).

5. Pricing

The California PUC began the process of developing rates for Pacific's network elements three years before the 1996 Act was passed. In April 1993, the California PUC launched its Open Access and Network Architecture Development ("OANAD") proceeding. The goals of the OANAD proceeding anticipated those of the 1996 Act: to require that bottleneck functions used to provide communications services be offered on an unbundled and nondiscriminatory basis to affiliated and unaffiliated providers alike; to require that such unbundled bottleneck functions be provided on reasonable terms and conditions to any competitor or user requesting them; to allow unaffiliated providers the opportunity both to profit and to accept the risk that unbundling may prove uneconomic; and to require the dominant carrier to deploy future technologies in as open a manner as feasible and to inform potential users about the interfaces and other points of interconnection as they are made available. See Batongbacal Aff. ¶ 12; OANAD Rulemaking Order at 17-21.

Between 1993 and 1995, the California PUC conducted intensive workshops and ultimately established a set of costing principles. See Scholl Aff. ¶ 14; Vandeloop Aff. ¶ 9. Specifically, the California PUC ordered Pacific to perform cost studies on an initial list of UNEs using a Total Service Long Run Incremental Costing ("TSLRIC") methodology. Between December 1995 and June 1996, Pacific submitted TSLRIC cost studies for UNEs and services. The California PUC conducted an exhaustive review of these studies. Based upon "the cost studies themselves and the supporting workpapers, . . . four rounds of comments totaling over 500 pages, as well as numerous discovery responses that our staff has reviewed," the California PUC issued a decision in August 1996. Interim Opinion at 12, Rulemaking on the Commission's

Own Motion to Govern Open Access, D.96-08-021 (Cal. PUC Aug. 2, 1996) ("TSLRIC Cost Decision") (App. C, Tab 9); see Batongbacal Aff. ¶ 24. The California PUC approved forwarding-looking costs for six basic network functions (loops, line-side ports, signaling links, signal transfer point, service control point, and network access channel connections), concluding that Pacific's cost studies were consistent with the costing principles it had established. See Batongbacal Aff. ¶ 24.

This Commission issued its Local Competition Order less than a week after the California PUC issued its TSLRIC Cost Decision. The TELRIC methodology adopted by this Commission was quite similar to the California PUC's TSLRIC methodology that had been the basis for the rates established in the OANAD proceeding. In December 1996, the Administrative Law Judge overseeing the California PUC's OANAD proceeding directed Pacific to submit recurring and non-recurring TELRIC studies for UNEs that complied with the TELRIC principles described in the Local Competition Order.[22] Pacific submitted the requested studies in January 1997, addressing the cost of every element that had been identified in Pacific's arbitration proceedings, as well as certain additional UNEs for which no costs had yet been identified. Pacific filed updates to the recurring TELRIC studies in February 1997. See Scholl Aff. ¶¶ 21-22 & Attachs. A & B.

Pacific submitted thousands of pages of work papers, responded to numerous data requests, and made its cost witnesses available for a four-day deposition devoted exclusively to

[22] See Scholl Aff. ¶ 20 (discussing ALJ's Ruling Concerning Impact of the August 8, 1996 First Report and Order of the Federal Communications Commission in CC Docket No. 96-98 on the Scope of this Proceeding, Rulemaking on the Commission's Own Motion to Govern Open Access, R.93-04-003, I.93-04-002 (Cal. PUC Dec. 18, 1996) (App. D, Tab 21)).

how Pacific conducted its modeling of its switching investments. See id. ¶ 23. In addition, parties had access to all of Pacific's cost models. Both AT&T and MCI had complete versions of the SCIS model (the model used for determining switching investments) fully populated with Pacific's input data. Id. More than 450 individuals signed nondisclosure agreements granting access to Pacific's work papers and models. See id.

AT&T and MCI submitted their alternative cost studies based on the "Hatfield Model" in January 1997. After thoroughly reviewing Pacific's TELRIC study and the Hatfield Model, the California PUC concluded in February 1998 that the defects in the Hatfield Model's structure and in certain of its input assumptions were so serious that it rejected the model as a basis for establishing Pacific's forward-looking costs. See First TELRIC Cost Decision at 26-28, 102-03 (Conclusions of Law ¶¶ 15-20); see also Scholl Aff. ¶¶ 33-80. The California PUC concluded that "[i]t would be inappropriate to adopt Version 2.2.2 of the Hatfield Model for the purpose of estimating the forward-looking costs of Pacific's system." First TELRIC Cost Decision at 103 (Conclusion of Law ¶ 20).

Later that year, in December 1998, the California PUC established the non-recurring costs for unbundled network elements. See Second TELRIC Cost Decision; see also Scholl Aff. ¶¶ 81-100. Finally, in November 1999, the California PUC adopted permanent recurring and non-recurring UNE rates. See OANAD Pricing Decision. In that decision, the California PUC also adopted a uniform 19 percent shared and common cost mark-up applied to the previously

adopted TELRIC results. Id. at 72; Scholl Aff. ¶ 19.[23] The adopted prices replaced the interim prices in all arbitrated interconnection agreements.

The prices established by the California PUC fully comply with the requirements of sections 251(c)(2), 251(c)(3), and 252(d)(1). See OANAD Pricing Decision at 269 (Ordering ¶¶ 1-2). The final rates reflected no embedded or sunk costs. See Scholl Aff. ¶ 8. On the contrary, they reflected only the forward-looking fill factors and depreciation rates adopted by the California PUC as appropriate for Pacific's operation in a competitive environment. See id. ¶¶ 54-61; TSLRIC Cost Decision; First TELRIC Cost Decision. The only challenge that any

[23] The federal district court for the Northern District of California recently upheld the California PUC's calculation of Pacific's common costs, as well as its methodology for allocating those costs to UNEs, against a challenge brought by AT&T and WorldCom. See Order on Cross-Motions for Summary Judgment at 25-33, AT&T Communications of California, Inc. v. Pacific Bell Tel. Co., No. C 01-02517 CW (N.D. Cal. Aug. 6, 2002) (App. K, Tab 55). The court also concluded, in response to a counterclaim raised by Pacific, that the Commission had "double-count[ed]" Pacific's nonrecurring costs in the denominator of the common-cost fraction. See id. at 36-38. The court remanded the case to the Commission. See Judgment, AT&T Communications of California, Inc. v. Pacific Bell Tel. Co., No. C 01-02517 CW (N.D. Cal. Aug. 6, 2002) (App. K, Tab 56) (ordering that "this action be remanded" to the California PUC). On September 11, 2002, the Assigned Commissioner issued a proposed order requiring the shared- and common-cost markup to be increased from 19 percent to 21 percent and requiring the expense portion of Pacific's UNE costs to be modified to incorporate a 13 percent reduction. See Draft Opinion on Remand Addressing Shared and Common Cost Markup and Recurring Prices Established in Decision 99-11-050, Joint Application of AT&T Communications of California, Inc. and WorldCom, Inc., A.01-02-024 (Cal. PUC Sept. 11, 2002) (App. K, Tab 60). The CPUC adopted that proposed order at its September 19, 2002, meeting. Subject to any applications for rehearing or judicial review by any interested party, Pacific will implement the CPUC's order in accordance with the schedule ordered by the CPUC. See Vandeloop Aff. ¶ 14. As with the CPUC's final order regarding Pacific's 271 application, Pacific will promptly file the CPUC's order on remand upon its release.

CLEC has ever brought to those rates in federal district court under section 252(e)(6) was recently rejected.[24]

As part of the OANAD Pricing Decision, the California PUC established a process that invited carriers with interconnection agreements with Pacific to nominate each year up to two network elements for reexamination of their costs. A party nominating a network element for review must make an initial showing that the costs have changed by at least 20 percent from the costs approved in the First TELRIC Cost Decision. See OANAD Pricing Decision at 271-72 (Ordering ¶ 11); see also Vandeloop Aff. ¶ 23.

In June 2001, the "Relook Process" began when the California PUC commenced a reexamination of the costs and rates of unbundled loops and unbundled switching.[25] Pacific filed updated loop and switching cost studies on August 15, 2001. See Vandeloop Aff. ¶ 24. The 2002 Relook Process is also underway and has been consolidated with the 2001 proceeding. See id. ¶ 29.[26] Along with the loop and switching elements already being examined, the California PUC is reconsidering the costs and prices of DS-3 loops, DS-3 entrance facilities without equipment, unbundled dedicated transport, and Signaling System 7 ("SS7") links. Pacific and other parties will submit forward-looking cost studies for these UNEs, to be followed by

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[24] See Order on Cross-Motions for Summary Judgment at 25-33, AT&T Communications of California, Inc. v. Pacific Bell Tel. Co., No. C 01-02517 CW (N.D. Cal. Aug. 6, 2002).

[25] See Assigned Commissioner and Administrative Law Judge's Ruling Denying Motion to Abey Cost Re-Examination and Setting Scope for Unbundled Network Element Cost Re-Examination Proceeding, Rulemaking on the Commission's Own Motion to Govern Open Access, R.93-04-003, A.01-02-024 (Cal. PUC June 14, 2001) (App. D, Tab 224).

[26] See also Scoping Memo for Consolidated 2001/2002 Unbundled Network Element (UNE) Reexamination for Pacific Bell Telephone Company (June 12, 2002) ("2001/2002 Scoping Memo") (App. K, Tab 52).

technical workshops to discuss the cost submissions. The ALJ and assigned commissioner have committed to issuing a decision by mid-2003. 2001/2002 Scoping Memo at 18.

The third annual UNE "Relook Process" will commence in February 2003 with the new nominations of UNEs. The Relook Process ensures that the California PUC will remain committed to undertaking a rigorous review and oversight of UNE prices in California and that permanent forward-looking costs and prices in California continue to be consistent with established TELRIC principles.

As part of the 2001 Relook Process, AT&T and WorldCom filed a motion for interim relief requesting that the Commission immediately reduce Pacific's unbundled loop and unbundled switching prices. See Vandeloop Aff. ¶ 25. Two months later, in October 2001, Pacific offered to reduce its switching rates substantially. See Motion of Pacific Bell Telephone Company to Notify Parties of Discounted Switching UNE Prices, Rulemaking on Commission's Own Motion to Govern Open Access, R.93-04-003 (Cal. PUC filed Oct. 15, 2001) (App. D, Tab 237). After providing the parties a full opportunity to comment on the motion for interim relief and on Pacific's voluntary switch discounts, the California PUC issued an order in May 2002 that reduced Pacific's unbundled loop rate by 15.1 percent, its unbundled local switching rate by 69.4 percent,[27] and its unbundled tandem switching rate by 79.3 percent. See Interim Opinion

[27] The presiding ALJ recently recommended extending the 69.4 percent discount beyond the basic port to all ports types, including Coin Port, Centrex Port, Direct Inward Dial Port, DID Number Block, ISDN Port, Trunk Port Terminations (End Office), and DS1 Port. See Draft Interim Opinion Applying Pacific Bell Telephone Company Interim Switching Discounts to All Port Types at 11, Table 2, Joint Application of AT&T Communications of California, Inc. and WorldCom, Inc., A.01-02-024 (Cal. PUC Aug. 12, 2002) (App. D, Tab 260). The Trunk Port Termination (Tandem) was reduced by 79.3 percent, corresponding to the percentage reduction applied to the unbundled tandem switching rate in the Interim Rate Order. See id.

Establishing Interim Rates for Pacific Bell Telephone Co. at 71 (Ordering ¶ 3), App. A, Joint Application of AT&T Communications of California, Inc. and WorldCom, Inc., D.02-05-042 (Cal. PUC May 16, 2002) ("Interim Rate Order") (App. C, Tab 77).[28]

The price reductions ordered in May 2002 became immediately effective and are interim pending the completion of the 2001/2002 consolidated Relook Process.[29] With these recent reductions, Pacific's unbundled loop and UNE-P rates are among the lowest in the nation. See Vandeloop Aff. ¶ 46. Moreover, when the rates in California are compared to the rates in Texas – rates that this Commission has already found to be TELRIC based – the percentage difference in rates is more than justified by differences in costs, as reflected in the Universal Service Fund ("USF") Model. See Makarewicz Aff. ¶¶ 13-17 (App. A, Tab 14).[30] The benchmark analysis yields the following results:

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[28] Pacific incorporated the interim rates into all existing interconnection agreements by preparing amendments to those agreements, substituting the interim monthly recurring UNE prices for loops and switching for the UNE prices set forth in the interconnection agreements. See Interim Rate Order at 71 (Ordering ¶ 3); Vandeloop Aff. ¶ 25.

[29] See infra at 32-33 (discussing Pacific's commitments with respect to truing up these interim rates).

[30] When analyzing rates under its benchmark test, the Commission will consider the reasonableness of loop and non-loop rates separately. See Rhode Island Order ¶ 40 (whereas loop rates are comparable from one state to another, the Commission "combine[s] per-minute switching with other non-loop rates such as port, signaling, and transport rates because competing LECs most often purchase them together rather than separately, and because state commissions often differ in determining how to recover certain costs").

	Table 1 Comparison of USF Model Costs and UNE Rates					
	LOOP		NON-LOOP		UNE-P	
	Cost	Rate	Cost	Rate	Cost	Rate
California	$11.03	$9.93	$3.71	$4.45	$14.74	$14.39
Texas	$12.78	$14.10	$3.79	$6.72	$16.57	$20.82
% California is Below Texas	14%	30%	2%	34%	11%	31%

source: Makarewicz Aff. ¶ 13 Table 2.

The Commission has explained that, "if the percentage difference between the applicant state's rates and the benchmark state's rates does not exceed the percentage difference between the applicant state's costs and the benchmark state's costs, as predicted by the USF model, then we will find that the applicant has met its burden to show that its rates are TELRIC-compliant."[31] As the data in Table 1 reveal, whereas California loop costs are 14 percent lower than Texas loop costs, the California rates are 30 percent lower. Whereas the California non-loop costs are two percent lower than the Texas non-loop costs, the California non-loop rates are 34 percent lower. Finally, when the loop and non-loop elements are combined to create the UNE-P, the California costs for the UNE-P are 11 percent lower than the Texas costs, whereas the California UNE-P rate is 31 percent lower. See Makarewicz Aff. ¶ 13 Table 2.

These UNE-P rates are interim, and it is certainly possible that the California PUC will set higher permanent rates once the 2001/2002 Relook Process is complete. Should the California PUC establish higher permanent rates, Pacific would be entitled to a "true up" as if the permanent rates had been in place since the Interim Rate Order went into effect. However, in

[31] Pennsylvania Order ¶ 65.